

§ 7.2001

for its corporate governance procedures.

(c) *No-objection procedures.* The OCC also considers requests for its staff's position on the ability of a national bank to engage in a particular corporate governance procedure in accordance with the no-objection procedures set forth in Banking Circular 205 or any subsequently published agency procedures.² Requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations, and is consistent with safe and sound banking practices.

§ 7.2001 Notice of shareholders' meetings.

A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

§ 7.2002 Director or attorney as proxy.

Any person or group of persons, except the bank's officers, clerks, tellers, or bookkeepers, may be designated to act as proxy. The bank's directors or attorneys may act as proxy if they are not also employed as an officer, clerk, teller or bookkeeper of the bank.

§ 7.2003 Annual meeting for election of directors.

When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the state in which the bank is located, the shareholders' meeting shall be held, and the directors elected, on the next following banking day.

²Available upon request from the OCC Communications Division, 250 E Street, SW., Washington, DC 20219, (202) 874-4700.

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§ 7.2004 Honorary directors or advisory boards.

A national bank may appoint honorary or advisory members of a board of directors to act in advisory capacities without voting power or power of final decision in matters concerning the business of the bank. Any listing of honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

§ 7.2005 Ownership of stock necessary to qualify as director.

(a) *General.* A national bank director must own a qualifying equity interest in a national bank or a company that has control of a national bank. The director must own the qualifying equity interest in his or her own right and meet a certain minimum threshold ownership.

(b) *Qualifying equity interest—(1) Minimum required equity interest.* For purposes of this section, a qualifying equity interest includes common or preferred stock of the bank or of a company that controls the bank that has not less than an aggregate par value of \$1,000, an aggregate shareholders' equity of \$1,000, or an aggregate fair market value of \$1,000.

(i) The value of the common or preferred stock held by a national bank director is valued as of the date purchased or the date on which the individual became a director, whichever value is greater.

(ii) In the case of a company that owns more than one national bank, a director may use his or her equity interest in the controlling company to satisfy, in whole or in part, the equity interest requirement for any or all of the controlled national banks.

(iii) Upon request, the OCC may consider whether other interests in a company controlling a national bank constitute an interest equivalent to \$1,000 par value of national bank stock.

(2) *Joint ownership and tenancy in common.* Shares held jointly or as a tenant in common are qualifying shares held by a director in his or her own right only to the extent of the aggregate value of the shares which the director

would be entitled to receive on dissolution of the joint tenancy or tenancy in common.

(3) *Shares in a living trust.* Shares deposited by a person in a living trust (inter vivos trust) as to which the person is a trustee and retains an absolute power of revocation are shares owned by the person in his or her own right.

(4) *Other arrangements*—(i) *Shares held through retirement plans and similar arrangements.* A director may hold his or her qualifying interest through a profit-sharing plan, individual retirement account, retirement plan, or similar arrangement, if the director retains beneficial ownership and legal control over the shares.

(ii) *Shares held subject to buyback agreements.* A director may acquire and hold his or her qualifying interest pursuant to a stock repurchase or buyback agreement with a transferring shareholder under which the director purchases the qualifying shares subject to an agreement that the transferring shareholder will repurchase the shares when, for any reason, the director ceases to serve in that capacity. The agreement may give the transferring shareholder a right of first refusal to repurchase the qualifying shares if the director seeks to transfer ownership of the shares to a third person.

(iii) *Assignment of right to dividends or distributions.* A director may assign the right to receive all dividends or distributions on his or her qualifying shares to another, including a transferring shareholder, if the director retains beneficial ownership and legal control over the shares.

(iv) *Execution of proxy.* A director may execute a revocable or irrevocable proxy authorizing another, including a transferring shareholder, to vote his or her qualifying shares, provided the director retains beneficial ownership and legal control over the shares.

(c) *Non-qualifying ownership.* The following are not shares held by a director in his or her own right:

(1) Shares pledged by the holder to secure a loan. However, all or part of the funds used to purchase the required qualifying equity interest may be borrowed from any party, including the bank or its affiliates;

(2) Shares purchased subject to an absolute option vested in the seller to repurchase the shares within a specified period; and

(3) Shares deposited in a voting trust where the depositor surrenders:

(i) Legal ownership (depositor ceases to be registered owner of the stock);

(ii) Power to vote the stock or to direct how it shall be voted; or

(iii) Power to transfer legal title to the stock.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999]

§ 7.2006 Cumulative voting in election of directors.

When electing directors, a shareholder shall have as many votes as the number of directors to be elected multiplied by the number of the shareholder's shares. The shareholder may cast all these votes for one candidate, or distribute the votes among as many candidates as the shareholder chooses. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

§ 7.2007 Filling vacancies and increasing board of directors other than by shareholder action.

(a) *Increasing board of directors.* If authorized by the bank's articles of association, between shareholder meetings a majority of the board of directors may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was 15 or fewer, and by up to four directors, when the number of directors last elected by shareholders was 16 or more.

(b) *Vacancies.* If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by the shareholders, a majority of the board of directors remaining in office, or, if the directors remaining in office constitute fewer than a quorum, by an affirmative vote of a